

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

McGRATH DOWNTOWN AUTO INC. D/B/A
McGRATH ACURA OF DOWNTOWN CHICAGO

and

Cases 13-CA-156172
13-CA-160860

AUTOMOBILE MECHANICS LOCAL LODGE 701,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Andrea James and Melinda Hensel, Esqs.,
for the General Counsel.

Michael P. MacHarg and James F. Hendricks, Jr., Esqs.
(Litchfield Cavo LLP),
for the Respondent.

Rick Mickschl, Grand Lodge Representative,
for the International Association of Machinists and Aerospace Workers.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was tried in Chicago, Illinois on March 21 and 22, 2016. The complaint alleged that McGrath Downtown Auto Inc. d/b/a McGrath Acura of Downtown Chicago (Acura Downtown or the Respondent) violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act). On the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' post-hearing briefs, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

At all material times, Acura Downtown, a corporation with an office and place of business in Chicago, Illinois, has operated an automobile dealership. Annually, it derives gross revenues in excess of \$500,000, and purchases and receives goods worth over \$5,000 directly from points outside of Illinois. It, thus, admits, and I find, that it is an employer engaged in

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence.

commerce, within the meaning of Section 2(2), (6) and (7) of the Act. It also admits, and I find, that the Automobile Mechanics Local Lodge 701, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) is a labor organization, within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

In June 2012, Acura Downtown opened. On May 27, 2015,² an election was held in the following appropriate collective bargaining unit (the unit):

All full-time and regular part-time Acura Technicians, including journeymen technicians, apprentice technicians, semi-skilled technicians, and lube rack technicians employed by the Employer at the [Acura Downtown store]...; but excluding all Lexus technicians, service writers, parts department employees, porters, sales and managerial employees, office clerical employees, professional employees, guards and supervisors as defined by the Act.

The Union won this election; on June 10, it was certified as the unit's representative.

B. Leave Policy Changes

This litigation mainly involves alleged changes to the unpaid leave policy following the election. A comparison of the pre-and post-election leave policies is, therefore, useful.

1. Employee Handbook

The Employee Handbook is a good starting point; it states, in relevant part, that:

The Dealership ... grants paid vacation to ... employees ... as outlined below:

Completed Years of Continuous Service ...	Vacation Days Earned
1	5
2-6	10
7+	15

.... [Y]ou must inform your supervisor of your desired vacation ... as far in advance as possible While the Dealership will make every effort to grant your vacation ...[,], your request may be denied depending on business needs [T]he Dealership may cancel previously-approved vacation requests

(GC Exh. 2 at pp. 26–27). This policy is, unfortunately, silent regarding unpaid leave; this void was filled by past practice, which is now in dispute.

² All dates herein relate to 2015, unless otherwise stated.

2. Pre-Election Unpaid Leave Practices and Announcement of the Change

a. General Counsel's (the GC) Position

5 Technician Abel Duran credibly testified that, in 2012, former Service Manager Brad Bartholow granted him unpaid leave with 30 days of notice.³ See (GC Exh. 3). He stated that, in 2014, he took 3 weeks of paid and unpaid leave, which was approved by former Service Manager Jon Christiansen and written on the shop calendar. See (GC Exh. 5). Both Technician Gerardo Garcia and Master Technician Kenneth Mui corroborated that, before the election, employees received unpaid leave. See, e.g., (GC Exhs. 7-8). Mui added that, immediately after the election, Tom Christianson stated at a meeting, in the presence of Bartholow and General Manager Nobel Jones, that, "he wasn't sure . . . whether or not they were allowed to allow extra time off unpaid." (Tr. 140).

b. Respondent's Position⁴

15 Service and Parts Director Tom Christianson testified that the unpaid leave policy has been constant and he has never stated otherwise. He agreed that Jon Christianson granted unpaid leave.⁵

c. Findings

20 Duran's, Garcia and Mui's undisputed testimony that, before the election, unpaid leave was granted has been credited. They were persuasive and consistent, and had strong recalls.

25 Mui's testimony that, after the election, Tom Christianson stated that unpaid leave could no longer be granted has been credited. Mui was, as noted, highly credible and consistent, and held no obvious stake in the proceeding. The unexplained absence of General Manager Noble Jones, who might have corroborated Tom Christianson, also strongly supports Mui's account. 30 See *Douglas Aircraft Co.*, 308 NLRB 1217 (1992) (failure to call a witness "who may reasonably be assumed to be favorably disposed to the party, [supports] an adverse inference . . . regarding any factual question on which the witness is likely to have knowledge.").

3. Post-Election Implementation of Unpaid Leave Changes

a. GC's Position

35 Mui indicated that, in late-July, he asked current Service Manager Adam Hain whether 2 coworkers could take unpaid leave and was told that the Union would not allow it. (Tr. 154). 40 Technician Jesus Campo similarly testified that, when he asked Hain for unpaid leave for a September house closing, he was told that unpaid leave was unavailable and he should call in sick. (Tr. 194). Garcia stated that, on July 10, he asked Hain for unpaid leave for a dental appointment and was told that the Union would not permit it. (Tr. 123). He added that, in late-

³ Bartholow is no longer employed by Acura Downtown.

⁴ Neither Bartholow nor Nobel Jones testified.

⁵ Jon Christianson is no longer employed by Acura Downtown.

July, Hain repeated that the Union would not allow unpaid leave. (Tr. 130).

Duran stated that, in April, *i.e., before the election*, his request for a combined unpaid and paid vacation from June 15 to July 13 was approved by Jon Christiansen and written on the shop calendar. He said that he departed for his vacation without further discussion or incident. Upon returning, the time clock did not accept his “punch-in,” and reported that he had been terminated. He said that Hain explained that he was fired for taking unauthorized leave.

Technician Sixto testified that, before the election, Jon Christiansen approved his request for a combined paid and unpaid vacation from July 19 to 29, and wrote it on the shop calendar. He related that, after Duran’s firing, he contacted Human Resources Representative Jackie Ventura to confirm that his vacation remained valid. He said that Ventura could not find his paperwork and told him to submit another request to Hain, who denied it and said that, “now that the Union is in . . . everything [must be] by the book.” (Tr. 84). He said that this resulted in over a \$1,000 in losses connected to his cancelled flights. See (GC Exh. 4).

Technician Augustine Arroyo was suspended on July 29 for taking an unapproved unpaid leave. (GC Exh. 14). His leave request was denied because he lacked paid leave.⁶

b. Respondent’s Position

Tom Christianson denied changing the unpaid leave policy or saying that the Union was the culprit. Regarding Duran, he said that he approved his paid vacation, but, denied his unpaid leave. He said that he did not tell him directly, but, that Master Technician Jon Delfin did.⁷ Hain testified that he was told that, if Duran did not timely return for his leave, he should be fired. He stated that he lacked the authority to grant unpaid leave, which was held by Tom Christianson. He denied changing the unpaid leave policy, blaming the Union, or telling Campo to call in sick.

c. Findings

i. Hain’s Comments

The GC’s witnesses alleged that Hain made the following comments, which he denies:

<u>Witness</u>	<u>Date</u>	<u>Statement</u>
Mui	July	“Union is not letting . . . [employees] leave early [with] unpaid . . . time.”
Garcia	July	Unpaid leave cannot be granted for a dental appointment “because the Union would not let us go” and no unpaid leave could be given because of the Union.
Sixto	July	Previously approved unpaid leave request was revoked because “now that the Union is in . . . everything [must be] by the book,” which was “coming from the top.”
Campo	Sept.	Unpaid leave could not be granted for his house closing and he should just call in sick instead; “it wasn’t him enforcing the rules, it was Tom Christianson.”

⁶ Acura Downtown declined to present additional evidence on this issue. (Tr. 265).

⁷ Delfin was not called to testify.

The above-described witnesses have been credited; they were persuasive, with strong recalls and demeanors. They were internally and externally consistent. Their testimony was also consistent with the clear cessation of unpaid leave, which was substantiated via other independent evidence.

ii. Duran's Termination

Given that Duran testified that his leave was approved and its revocation was never communicated before his firing, and Tom Christianson testified otherwise, a credibility resolution must be made. For several reasons, Duran has been credited. He was a strong witness with a stellar demeanor, whose account was deeply consistent with Acura Downtown's elimination of unpaid leave after the Union election. Tom Christianson's account is undercut by the conspicuous failure to call Delfin as his corroborating witness. *Douglas Aircraft Co.*, supra.

4. Absence of Bargaining

Assistant Union Director Armando Arreola testified that he was never notified concerning the unpaid leave policy change, or allowed to bargain. This claim is undisputed.

C. Contested Employee Handbook Policies

The GC has alleged that these Employees Handbook policies are unlawful:

1. *Harassment Policy*

This policy offers that:

Investigation of a harassment complaint will be conducted in a manner that protects ... confidentiality **Employees involved in an investigation are expected to refrain from discussing it with others**

(GC Exh. 2 at p. 7) (emphasis added).

2. Confidentiality Policy

This policy provides that:

[T]he Dealership must maintain confidentiality The Dealership requires that all employees keep and maintain any and all confidential information in the strictest of confidence Confidential information includes ... information or records regarding any of its past or present employees; ... [and] this Employee Handbook; or operating policies or procedures of the Dealership....

(GC Exh. 2 at p. 11) (emphasis added).

3. *Information Request Policy*

This policy relates as follows:

[I]t is ... common to receive inquiries from outsiders

If you receive a telephone call, letter or any other request for information about a current or former employee of the Dealership, you should immediately direct the call to Human Resources with no further response.

(GC Exh. 2 at p. 12) (emphasis added).

4. *Cell Phone Policy*

This policy states that:

[C]ell phones ... can be very disruptive **Use of camera cell phones to take pictures or videos is strictly prohibited ... on Dealership property**

(GC Exh. 2 at p. 37) (emphasis added).

III. ANALYSIS

A. *8(a)(1) Allegations*⁸

1. **Overbroad Employee Handbook Policies**

The *Harassment* policy unlawfully prohibits “[e]mployees involved in an investigation . . . from discussing it with others.” See, e.g., *Banner Health System*, 362 NLRB No. 137, slip op. at 3 (2015) (holding that, “[e]mployees have a Section 7 right to discuss discipline or ongoing disciplinary investigations involving themselves or coworkers.”); *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 5–6 (2014). In the absence of a showing that a ban “has a legitimate and substantial business justification that outweighs employees’ Section 7 rights,” which has not been done herein, this prohibition is unlawful. *Id.*

The *Confidentiality* policy unlawfully requires employees to maintain the privacy of employee information, the Employee Handbook and operating policies. This policy can be reasonably construed by employees to bar them from collectively discussing their terms and conditions of employment with each other or the Union. See, e.g., *Costco Wholesale Corp.*, 358 NLRB 1100 (2012) (“[s]ensitive information such as ... payroll . . . may not be shared . . . without prior management approval”); *Bigg’s Food*, 347 NLRB 425 fn. 3 (2006).

The *Information Request* policy unlawfully bans employees from talking to the media, government or other outlets without authorization. See *Trump Marina Assoc.*, 355 NLRB 585 (2010). Moreover, the Board has held that preauthorization requirements unduly interfere with

⁸ These allegations are listed under complaint pars. 5, 6 and 10.

the Section 7 right to “improve terms and conditions of employment” by seeking outside assistance. See *Valley Hospital Medical Center Inc.*, 351 NLRB 1250, 1252 (2007) (newspaper contacts); *Handicabs, Inc.*, 318 NLRB 890, 896 (1995), enforced, 95 F.3d 681 (8th Cir. 1996) (customer contacts); *Knauz BMW*, 358 NLRB 1754 (2012) (government contacts).

The *Cell Phone* policy unlawfully bars employees from “[using] camera cell phones to take pictures or videos . . . on Dealership property,” inasmuch as such a rule could be reasonably construed to proscribe employee discussions of workplace footage with each other or the Union. See, e.g., *Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 5 (2015); *Hyundai America Shipping Agency*, 357 NLRB 860, 860, 871 (2011) (finding rule that barred employees from disclosing “information or messages” derived from company email, instant messaging, phone and other computer systems except to “authorized persons” to be unlawful).

2. Threats

Hain’s repeated comments to unit employees that he could no longer grant unpaid leave because of the Union were unlawful. Blaming lost benefits on union activities is unlawful. *Wellstream Corp.*, 313 NLRB 698, 707 (1994).

B. 8(a)(5) Allegations⁹

1. Legal Precedent

An employer must bargain in good faith with a union regarding wages, hours and other terms and conditions of employment. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). An employer, thus, violates the Act, when it makes material unilateral changes in mandatory bargaining topics. *NLRB v. Katz*, 369 U.S. 736 (1962). In order to trigger a bargaining obligation, a change must be material, substantial and significant. *Crittenton Hospital*, 342 NLRB 686 (2004). The GC can establish a prima facie unilateral change violation, if it shows that an employer made a material and substantial change in a term of employment without negotiating. The burden then shifts to the employer to show that the change was permissible (e.g., consistent with established past practice). *Fresno Bee*, 339 NLRB 1214 (2003).

2. Changes to the Unpaid Leave Procedure

Acura Downtown violated the Act, when it unilaterally changed the unpaid leave procedure. Before the election, employees could take reasonable amounts of unpaid leave in isolation, or in tandem with paid vacation. Acura Downtown conspicuously failed to offer a single example of unpaid leave not being granted or revoked before the election. Following the election, Acura Downtown ceased granting unpaid leave, and cancelled several previously approved unpaid leave requests. Its implementation of this new policy was demonstrated, inter alia, by: its revocation of Duran’s approved unpaid leave and associated firing;¹⁰ its revocation of Sixto’s approved unpaid leave; and Arroyo’s discipline for taking unpaid leave.¹¹ The new

⁹ These allegations are listed under complaint pars. 5, 10–15 and 19.

¹⁰ Duran’s firing was egregious, given that he was not notified that his approved unpaid leave had been revoked.

¹¹ The GC seeks to amend the complaint to allege that the unilateral change caused Acura Downtown to issue

unpaid leave policy was repeatedly disseminated to the unit, via Hain and Tom Christianson. This change was enacted without notice or bargaining. The Board has held that leave procedures are mandatory bargaining subjects and connected unilateral changes are unlawful. *United Cerebral Palsy of New York City*, 347 NLRB 603, 606–607 (2006). Given that the bargaining obligation accrued right after the election,¹² this post-election unilateral change was unlawful.¹³ Section 8(a)(5) was further violated, when Acura Downtown fired Duran, suspended Arroyo, and revoked Sixto’s previously-approved unpaid leave pursuant to its unilateral change in the unpaid leave procedure. *Consec Security*, 328 NLRB 1201 (1999).

C. 8(a)(3) Allegations¹⁴

The complaint also alleged that the unpaid leave policy change was discriminatory and violated Section 8(a)(3). Given that this change violated Section 8(a)(5), a further finding of an 8(a)(3) violation would be cumulative and would not impact the remedy. It is, thus, unnecessary to decide this redundant allegation. *Tri-Tech Services, Inc.*, 340 NLRB 894, 895–896 (2003); *Sygma Network Corp.*, 317 NLRB 411 (1995).

CONCLUSIONS OF LAW

1. Acura Downtown is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Acura Downtown violated Section 8(a)(1) by maintaining these overbroad policies in its Employee Handbook:

a. The *Harassment* policy to the extent that it subjected employees to discipline for discussing harassment or other workplace investigations with others.

b. The *Confidentiality* policy to the extent that it subjected employees to discipline for sharing employee information, the Employee Handbook or operating policies.

c. The *Information Request* policy to the extent that it subjected employees to discipline for talking to the media, government or other outlets without authorization.

d. The *Cell Phone* policy to the extent that it subjected employees to discipline for “[using] camera cell phones to take pictures or videos . . . on Dealership property.”

Arroyo a 2-day suspension for taking unpaid leave. This matter was fully litigated, is closely related to existing allegations and covered by the underlying charges. Acura Downtown has not been unduly prejudiced, and the amendment is, therefore, granted. *Payless Drug Stores*, 313 NLRB 1220, 1220–1221 (1994).

¹² A bargaining obligation begins with an election victory. *Alta Vista Regional Hospital*, 357 NLRB 326 (2011).

¹³ Acura Downtown has not averred, nor does the record suggest, that it made a *pre-election* decision to change unpaid leave that was imposed post-election. *Mail Contractors of America, Inc.*, 346 NLRB 164, 175 (2005).

¹⁴ This allegation is listed under complaint pars. 9 and 10.

4. Acura Downtown violated Section 8(a)(1) by telling employees that they would no longer be granted unpaid leave because of the Union.

5. At all times since June 10, 2015, the Union has been the certified exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the following appropriate bargaining unit:

All full-time and regular part-time Acura Technicians, including journeymen technicians, apprentice technicians, semi-skilled technicians, and lube rack technicians employed by [Acura Downtown]...; but excluding all Lexus technicians, service writers, parts department employees, porters, sales and managerial employees, office clerical employees, professional employees, guards and supervisors as defined by the Act.

6. Acura Downtown violated Section 8(a)(1) and (5) of the Act by changing the unpaid leave policy without first notifying the Union and giving it an opportunity to bargain.

7. Acura Downtown violated Section 8(a)(1) and (5) of the Act by discharging Duran, suspending Arroyo and revoking Sixto's previously-approved, unpaid leave request pursuant its unlawful unilateral change in the unpaid leave policy.

8. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Acura Downtown committed unfair labor practices, it is ordered to cease and desist and to take certain affirmative action designed to effectuate the Act's policies. It must rescind the overbroad Employee Handbook rules, and furnish all current employees with inserts for their current handbooks that (1) advise that the unlawful rules have been rescinded, or (2) provide a lawfully worded rule on adhesive backing that will cover the unlawful rules; or publish and distribute to all current employees revised handbooks that (1) do not contain the unlawful rules, or (2) provide lawfully worded rules.

Having found that it violated Section 8(a)(5) by unilaterally changing the unpaid leave policy without affording the Union an opportunity to bargain, it must rescind the changes and restore the status quo ante. It must rescind all discipline based in any way upon this unilateral change, and make Duran and Arroyo whole for any loss of earnings and other benefits suffered.¹⁵ Duran's make-whole remedy shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Arroyo's make whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New*

¹⁵ The GC requests that, as a remedy for the unilateral change, Sixto be reimbursed for his flight cancellation fees and other costs associated with the revocation of his leave. This consequential damage request does not reflect extant law and must be denied. See *Goodman Logistics, LLC*, 363 NLRB No. 177, slip op. at 2-3, fn. 2 (2016).

Horizons, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Duran and Arroyo shall be compensated for the adverse tax consequences, if any, associated with receiving a lump-sum backpay award, and Respondent shall file a report with the Regional Director allocating backpay to the appropriate calendar year for each worker. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Acura Downtown shall distribute remedial notices electronically via email, intranet, internet, or other appropriate electronic means to its employees, in addition to the traditional physical posting of paper notices, if it customarily communicates with workers in this manner. *J Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁶

ORDER

McGrath Downtown Auto Inc. d/b/a McGrath Acura of Downtown Chicago, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Maintaining an overbroad *Harassment* policy in its Employee Handbook, which subjected employees to discipline for discussing harassment or other workplace investigations with others.

b. Maintaining an overbroad *Confidentiality* policy in its Employee Handbook, which subjected employees to discipline for sharing “information or records regarding any of its past or present employees,” the Employee Handbook, or “operating policies or procedures of the Dealership” with others.

c. Maintaining an overbroad *Information Request* policy in its Employee Handbook, which subjected employees to discipline for talking to the media, government or other outlets without authorization.

d. Maintaining an overbroad *Cell Phone* policy in its Employee Handbook, which subjected employees to discipline for “[using] camera cell phones to take pictures or videos . . . on Dealership property.”

e. Telling employees that they would no longer receive unpaid leave because of the Union.

f. Failing and refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit:

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All full-time and regular part-time Acura Technicians, including journeymen technicians, apprentice technicians, semi-skilled technicians, and lube rack technicians employed [at Acura Downtown]...; but excluding all Lexus technicians, service writers, parts department employees, porters, sales and managerial employees, office clerical employees, professional employees, guards and supervisors as defined by the Act.

g. Unilaterally changing the unpaid leave policy, without first notifying the Union and giving it an opportunity to bargain.

h. Discharging, suspending, revoking previously-approved unpaid leave requests, or otherwise adversely affecting unit employees pursuant to its unlawful unilateral change in the unpaid leave policy.

i. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

a. Rescind or modify the language in the *Harassment* policy to the extent that it barred employees from discussing harassment or other workplace investigations with others.

b. Rescind or modify the language in the *Confidentiality* policy to the extent that it banned employees from sharing “information or records regarding any of its past or present employees,” the Employee Handbook, or “operating policies or procedures of the Dealership” with others.

c. Rescind or modify the language in the *Information Request* policy to the extent that it prohibited employees from talking to the media, government or other outlets without authorization.

d. Rescind or modify the language in the *Cell Phone* policy to the extent that it barred employees from “[using] camera cell phones to take pictures or videos . . . on Dealership property.”

e. Furnish all current employees with inserts for the Employee Handbook that

- i. Advise that the unlawful rules have been rescinded, or
- ii. Provide the language of lawful rules or publish and distribute a revised Employee Handbook that
 1. Does not contain the unlawful rules, or
 2. Provides the language of lawful rules.

f. Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees.

5 g. Rescind the changes to the unpaid leave policy that were unilaterally implemented on or about May 27, 2015.

10 h. Remove from its files any references to the discipline issued to Duran, Arroyo or any other unit employees who were disciplined pursuant to the unlawfully implemented change in the unpaid leave policy, and within 3 days thereafter notify them in writing that this has been done and that their unlawful discipline will not be used against them in any way.

15 i. Offer Duran and any other unit employees who were discharged pursuant to the unlawfully implemented change in the unpaid leave policy full reinstatement to their former positions, or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

20 j. Make Duran, Arroyo and any other unit employees who were adversely affected by the unlawfully implemented change in the unpaid leave policy whole in accordance with the remedy section.

25 k. Compensate Duran, Arroyo and any other unit employees who were adversely affected by the unlawfully implemented change in the unpaid leave policy for the adverse tax consequences, if any, associated with receiving lump-sum backpay awards, and file a report with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating backpay to the appropriate calendar quarters for each.

30 l. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the backpay amounts due under the terms of this Order.

35 m. Within 14 days after service by Region 13, post at its Chicago, Illinois facility copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in
40 conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps

¹⁷ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

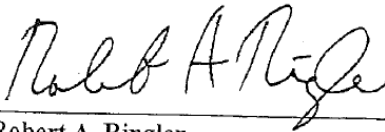
shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at any time since May 27, 2015.

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n. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

10

Dated Washington, D.C., August 9, 2016

A handwritten signature in black ink, appearing to read "Robert A. Ringler", written over a horizontal line.

Robert A. Ringler
Administrative Law Judge

15

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which prohibit you from discussing harassment or other workplace investigations with others.

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which bar you employees from sharing “information or records regarding any of its past or present employees,” the Employee Handbook, or “operating policies or procedures of the Dealership” with others.

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which ban you from talking to the media, government or other outlets without authorization.

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which prohibit you from “[using] camera cell phones to take pictures or videos ... on Dealership property.”

WE WILL NOT tell you that you will no longer receive unpaid leave because of the Union.

WE WILL NOT refuse to bargain collectively with the International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time Acura Technicians, including journeymen technicians, apprentice technicians, semi-skilled technicians, and lube rack technicians employed by the Employer at the [Acura Downtown store]...; but excluding all Lexus technicians, service writers, parts department employees, porters, sales and managerial employees, office clerical employees, professional employees, guards and supervisors as defined by the Act.

WE WILL NOT change your unpaid leave policy or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fire or suspend you, revoke previously-approved unpaid leave, or otherwise harm you under an unpaid leave policy that was changed without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL rescind or modify these disciplinary provisions in our Employee Handbook:

1. The *Harassment* policy to the extent that it barred employees from discussing harassment or other workplace investigations with others.
2. The *Confidentiality* policy to the extent that it banned employees from sharing “information or records regarding any of its past or present employees,” the Employee Handbook, or “operating policies or procedures of the Dealership” with others.
3. The *Information Request* policy to the extent that it prohibited employees from talking to the media, government or other outlets without authorization.
4. The *Cell Phone* policy to the extent that it barred employees from “[using] camera cell phones to take pictures or videos . . . on Dealership property.”

WE WILL furnish all of you with inserts for the current Employee Handbook that:

1. Advise that the unlawful provisions, above have been rescinded, or
2. Provide the language of lawful provisions, or publish and distribute revised Employee Handbooks that:
 - a. Do not contain the unlawful provisions, or
 - b. Provide the language of lawful provisions.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive bargaining representative of our unit employees.

WE WILL rescind the changes to the unpaid leave policy that were unilaterally implemented on May 27, 2015.

WE WILL remove from our files any reference to discipline issued to Abel Duran, Augustine Arroyo and any other unit employees who were disciplined pursuant to our unilateral changes to our unpaid leave policy, and **WE WILL**, within 3 days thereafter, notify them in writing that this has been done and that such discipline will not be used against them in any way.

WE WILL offer Duran and any other unit employee, who was fired pursuant to the changes to

the unpaid leave policy that we unilaterally implemented May 27, 2015, full reinstatement to their former positions, or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Arroyo and any other unit employee, who was suspended because of the changes to the unpaid leave policy that we unilaterally implemented May 27, 2015.

WE WILL compensate Duran and Arroyo and any other unit employees who were disciplined pursuant for the adverse tax consequences, if any, of receiving a lump-sum backpay award from us, and **WE WILL** file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for Duran, Arroyo and any other affected unit employees.

**McGRATH DOWNTOWN AUTO INC. D/B/A
McGRATH ACURA OF DOWNTOWN
CHICAGO**
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-156172 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Dirksen Federal Building, 219 South Dearborn Street, Suite 808
Chicago, IL 60604-5208
(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (312) 353-7570.